



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0713]

RIN 1625-AA00

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the Navy Pier Southeast Safety Zone within the Chicago Harbor. This action is necessary to alleviate congestion near the Chicago Lock during regularly scheduled fireworks events. The current safety zone encompasses part of the lock restricting vessels during events. This rule allows the lock to remain in full operation during the fireworks display.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-0713 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LT John Ramos, Waterways Management Division, Marine Safety Unit

Chicago, U.S. Coast Guard; telephone (630) 986-2155, email D09-DG-MSUChicago-Waterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Captain of the Port (COTP) Lake Michigan is modifying the size of the established safety zone outlined in 33 CFR 165.931 (a) to allow for the Chicago Lock to remain open during fireworks displays. The current safety zone encompasses all waters of Lake Michigan within Chicago Harbor bounded by coordinates beginning at 41°53'26.5" N, 087°35'26.5" W; then south to 41°53'7.6" N, 087°35'26.3" W; then west to 41°53'7.6" N, 087°36'23.2" W; then north to 41°53'26.5" N, 087°36'24.6" W; then east back to the point of origin (NAD 83). The safety zone in this final rule still ensures a safe distance for spectators while allowing the Chicago Lock to remain open during the duration of the fireworks. The area in this final rule encompasses all waters of Lake Michigan within Chicago Harbor bounded by coordinates beginning at 41°53'23.3" N, 087°36'04.5" W; then south to 41°53'11.8" N, 087°36'04.1" W; then west to 41°53'12.1" N, 087°35'40.5" W; then north to 41°53'23.6" N, 087°35'40.07" W; then east back to the point of origin (NAD 83).

On September 13, 2018 the Coast Guard published a notice of proposed rulemaking (NPRM) in the *Federal Register* titled Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL, 33 CFR Part 165 (83 FR 46449).

Included in the NPRM was an invitation to make comments on the proposed regulatory action for the modification of the size of the Navy Pier Southeast Safety Zone. The Coast Guard received 14 comments during the comment period, which ended October 15, 2018.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP Lake Michigan has determined that modifying the preexisting safety zone will reduce congestion near the Chicago Lock. This rule would not significantly change the regulatory language found in 33 CFR 165.931. The change will only moderately reduce the size of the safety zone with updated coordinates, found in 33 CFR 165.931 (a). The purpose of this rule is to protect the safety of vessels and persons in the safety zone before, during, and after scheduled events while allowing the Chicago Lock to remain open for vessel traffic.

IV. Discussion of Comments, Changes, and the Rule

As noted above, The Coast Guard received fourteen (14) comments on our NPRM published September 13, 2018. There were ten (10) comments that supported modifying the size of the safety zone to allow the Chicago Lock and Dam to remain open, allowing vessels to proceed during the Fireworks Display. There were two (2) comments that were unrelated to the modification of the Safety Zone and two (2) comments that addressed congestion and the safety issues of modifying the size of the Safety Zone.

One of these comments misinterpreted the authority under which the safety zone is issued. The commenter refers to 50 U.S.C. 191 but that statute provides the authority for security zones. See, 33 CFR 165.9(c). As noted above in the “Legal Authority and Need for Rule” section, this rule is under authority in 33 U.S.C. 1231.

The other comment failed to comprehend that the safety zone in this final rule does allow vessel traffic to safely proceed through the Chicago Lock without entering the safety zone. The safety zone in this final rule was evaluated and we determined that the reduction in size could be accomplished safely while allowing the Chicago Lock to remain open for vessel traffic. Allowing the Lock to remain open alleviates vessel congestion that is also a safety concern.

After review, the Coast Guard amended this final rule by updating the coordinates outlined in the NPRM to take into account applicable comments and suggestions. The new safety zone will encompass all waters of Lake Michigan within Chicago Harbor bounded by coordinates beginning at 41°53'23.3" N, 087°36'04.5" W; then south to 41°53'11.8" N, 087°36'04.1" W; then west to 41°53'12.1" N, 087°35'40.5" W; then north to 41°53'23.6" N, 087°35'40.07" W; then east back to the point of origin (NAD 83).

This rule does reduce the size of the safety zone outlined in 33 CFR 165.931 (a), but the size of the new safety zone still ensures a safe distance for spectators as well as vessels entering and exiting the locks. These new coordinates will allow vessels transiting to and from the lock to proceed North or South, while still maintaining a safe distance from the Fireworks Display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and, pursuant to OMB guidance, it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area for less than 1 hour during the scheduled events. Indeed, this action will allow for greater transit than the pre-existing safety zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this

rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), the Coast Guard wants to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The Coast Guard has analyzed this rule under that Order and has determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we discuss the effects of this rule elsewhere in this preamble.

F. Environment

The Coast Guard has analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard

in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone enforced intermittently, and for no longer than the time necessary to protect vessels and persons during scheduled Fireworks Displays. It is categorically excluded from further review under L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this reduction in size of a preexisting safety zone is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Amend §165.931 by revising paragraph (a) to read as follows:

§ 165.931 - Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL.

(a) *Location.* The following area is a safety zone: The waters of Lake Michigan within Chicago Harbor bounded by coordinates beginning at 41°53'23.3" N, 087°36'04.5" W; then south to 41°53'11.8" N, 087°36'04.1" W; then west to 41°53'12.1" N, 087°35'40.5" W; then north to 41°53'23.6" N, 087°35'40.7" W; then east back to the point of origin (NAD 83).

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Dated: February 26, 2019

THOMAS J. STUHLREYER,
Captain, U.S. Coast Guard,
Captain of the Port, Lake Michigan
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